

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DENESSA WESTBROOK, APRIL  
WESTBROOK, and MARTIN WESTBROOK,

Plaintiffs,

vs.

USDC Case No. 09-11457  
Hon. Nancy G. Edmunds  
Mag. R. Steven Whalen

LARRY DAVIS, JOSEPH WEEKLEY,  
JASON BRASGALLA, KEVIN SHEPHARD,  
G. CHESTER, D. FOSTER, C. ANDERSON,  
T. DOLLINGER, S. HOWITT, and E. HAYES,

Defendants.

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SHAWN C. CABO T (P-64021)  
CHRISTOPHER TRAINOR & ASSOC  
Attorneys for Plaintiffs  
9750 Highland Road  
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JERRY L. ASHFORD (P-47402)  
Attorney for Defendants Davis, Weekley  
Howitt, Dollinger, Hayes, Chester  
Anderson, and Brasgalla only  
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660 Woodward Avenue  
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**DEFENDANTS LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH  
HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE  
CHESTER, JASON BRAGALA, AND TIM DOLLINGER'S ANSWER  
TO COMPLAINT, AFFIRMATIVE DEFENSES, DEMAND FOR REPLY  
TO AFFIRMATIVE DEFENSES, JURY DEMAND, DEMAND FOR  
COMPULSORY JOINDER AND ELIJAH HAYES, WILLIAM HOWITT,  
COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA,  
AND TIM DOLLINGER'S JOINDER IN REMOVAL**

Defendants, LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER, by their counsel (who pursuant to Section 13-11-1 of the Detroit City Code, reserves the right to withdraw as counsel for the individually named defendant in the event his/her representation request is not approved by the Detroit City Council), answer Plaintiffs' Complaint as follows:

1. Defendant denies the allegations of paragraphs 11, 13, 14, 18-22, 24-29, 32-36, 38-41, 45-48, 54-56, 63-66, and 69 of Plaintiff's Complaint.
2. Defendant denies having sufficient knowledge or information upon which to form a belief regarding the allegations of Paragraphs 1-4, 6-10, 12, 15, 16, 31, 42, 44, 51, 53, 58, 68, and 70 of Plaintiff's Complaint and leave Plaintiffs to their proofs.
3. The allegations of paragraphs 50, 52, and 59-62 constitute conclusions of law which do not require a response.
4. The assertions of paragraphs 5, 17, 23, 30, 37, 43, 49, 57, and 67 do not require a response because these paragraphs are used by Plaintiffs for incorporation by reference or requests for relief.
5. Defendants admit nothing.

**WHEREFORE**, Defendants, LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER, respectfully demand dismissal of the Plaintiff's claims or judgment of no cause of action on those claims, together with attorney fees and costs wrongfully incurred.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

S/ Jerry L. Ashford

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Dated: April 21, 2009

### **AFFIRMATIVE AND SPECIAL DEFENSES**

Defendants, LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER, by their counsel, state the following as their following affirmative defenses:

#### **FIRST DEFENSE**

The plaintiff has failed to state a claim against defendants upon which relief can be granted.

#### **SECOND DEFENSE**

Any injury suffered by plaintiff was proximately caused by his/her own negligence and other wrongdoing, including serious wrongdoing that gives rise to the wrongful-conduct defense as well as the comparative negligence defense.

#### **THIRD DEFENSE**

The arrest, imprisonment, and prosecution of the plaintiff, if any, was supported by probable cause.

#### **FOURTH DEFENSE**

To the extent, if any, that the police officers or anyone acting at the direction of or in concert with the police officers used force against the plaintiff, each such person acted in self defense and/or defense of others.

#### **FIFTH DEFENSE**

To the extent, if any, that the police officers or anyone acting at the direction of or in concert with the police officers used force against the plaintiff, each such use of force was privileged and lawful because the force was reasonably applied in the execution of

a lawful arrest or in the lawful performance of other police duties.

#### **SIXTH DEFENSE**

The applicable statutes of limitation lapsed prior to the filing of Plaintiff's Complaint with respect to some or all of Plaintiff's claims.

#### **SEVENTH DEFENSE**

Plaintiff failed to mitigate his damages.

#### **EIGHTH DEFENSE**

Plaintiff has failed to join every legal and equitable claim arising from the incident central to the lawsuit.

#### **NINTH DEFENSE**

Vicarious/Respondeat Superior Liability is not available as a theory of liability.

#### **TENTH DEFENSE**

The Defendant City of Detroit's use of force, or fatal force, police policies have been found to conform to the constitutional requirements set forth in Garner v Tennessee, 471 US 1 (1985). See Berry v McLemore, 25 F3d 1342 (CA 6, 1994); Pleasant v Zamieski, 895 F2d 272, cert denied, 498 US 851 (CA 6, 1990).

#### **ELEVENTH DEFENSE**

There was no state action involved in the incident alleged in Plaintiff's Complaint (The police officers did not act under color of law).

#### **TWELFTH DEFENSE**

Defendants' conduct was not outrageous, extreme, or outside the limits of decency and did not cause emotional harm.

### **THIRTEENTH DEFENSE**

Defendants' alleged destruction of property while under attack was undertaken without malice, but in self-defense and/or defense of others. Further, the destruction was reasonably necessary to effectively execute the arrest/search warrant.

### **FOURTEENTH AMENDMENT**

Defendants' conduct was lawful, reasonable, and authorized and done in accordance with an arrest/search warrant.

### **FIFTEENTH AMENDMENT**

Defendants acted in an objectively reasonable manner in carrying out their law enforcement duties and, therefore, are shielded by qualified immunity. In no way did Defendants ever act recklessly, maliciously, or with intent to harm or injure Plaintiff.

### **SIXTEENTH**

Plaintiff did not suffer a constitutional deprivation of a clearly established right.

### **RESERVATION OF ADDITIONAL DEFENSES**

Defendants LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER, in the above captioned matter, by and through counsel, reserve the right to assert and file any affirmative and special defense which may become known by research, investigation, discovery proceedings in accordance with the rules and practices of this Court or otherwise. Further, Defendants do not waive any deficiency or omission in any pleadings filed by any other party to this suit regardless of when filed.

**WHEREFORE**, Defendants, LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER, respectfully demand dismissal of the Plaintiff's claims or judgment of no cause of action on those claims, together with attorney fees and costs wrongfully incurred.

Respectfully submitted,

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S/ Jerry L. Ashford

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**DEMAND FOR COMPULSORY JOINDER OF CLAIMS**

Defendants LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER demand Plaintiff join in this action all claims Plaintiff may have against any Defendants arising from the subject matter of this action and which do not require for adjudication the presence of third parties over whom the court cannot exercise jurisdiction.

Respectfully submitted,

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S/ Jerry L. Ashford

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April 21, 2009



**DEMAND FOR REPLY TO AFFIRMATIVE DEFENSES**

Defendants demand a reply to each and every Affirmative Defense set forth herein.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

S/ Jerry L. Ashford

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DATED: April 21, 2009

**JURY DEMAND**

Defendants LARRY DAVIS, JOSEPH WEEKLEY, ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER requests a jury trial in this cause of action. Defendants reserve the right to withdraw their Jury Demand at any time prior to trial.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

S/ Jerry L. Ashford

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Dated: April 21, 2009

**APPEARANCE AND JOINDER IN REMOVAL ON BEHALF OF  
DEFENDANTS ELIJAH HAYES, WILLIAM HOWITT, COURTNEY  
ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER**

The undersigned appears as counsel for Defendants ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER. The copy of the Complaint that was served on Defendants Larry Davis and Joseph Weekley and attached to the Notice of Removal of Civil action is the same as the copy of the Complaint served on Defendants Hayes, Howitt, Anderson, Chester, Bragala, and Dollinger

Defendants ELIJAH HAYES, WILLIAM HOWITT, COURTNEY ANDERSON, GEORGE CHESTER, JASON BRAGALA, AND TIM DOLLINGER hereby concur and join in the previously filed Notice of Removal of Civil Action.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

S/ Jerry L. Ashford

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Dated: April 21, 2009

I hereby certify that on April 21, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to Christopher J. Trainor, Esq.

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